Council cases of *Kwaku Mensah* v. *The King*[1] and *Bullard* v. *The Queen*.[2]

Having regard to the circumstances of this case, we do not consider that it would be appropriate to apply the proviso to section 6(1) of the Court of Criminal Appeal Ordinance; nor did learned Crown Counsel invite us to do so.

This is sufficient to determine the appeal. And it was for these reasons that we stated at the conclusion of the hearing of the appeal that we set aside the verdict of guilty of murder and substituted one of guilty of culpable homicide not amounting to murder; and sentenced the appellant to 10 years' imprisonment.

Verdict substituted.

Solicitors: *Marshall & Chung.*

Re M. A. NAMAZIE, DECD.

[O. C. J. (Ambrose J., C. H. Williams and Teo Yeok Soon, Assessors) June 9, 1960]

[Singapore — Land Acquisition No. 1 of 1958]

Land acquisition — Potentiality for development of coastal strip into building lots — Principles applicable — Land Acquisition Ordinance (Cap. 248).

On the 22nd March, 1957, a notification was published in the Singapore Government Gazette declaring that a certain piece of land comprising an area of about 406 acres was needed for a public purpose, namely, agricultural settlement. The Collector of Land Revenue awarded the sum of $488,092.50c. as the market value of the land on the relevant date, basing the award on the present use of the land and its primary use in the future as a rubber estate. Objection having been taken to the award, the matter was referred to the High Court.

Held: (1) potentialities of the land must be taken into account in assessing its market value;

(2) the Court must contemplate the sale of the land as a whole, unless it appears that the necessary legal consents to a subdivisional plan had been given, and a survey on the ground at the relevant date would have disclosed that the land or some part of it was in fact so far subdivided that the subdivided parts could at that date have been immediately sold and title given to individual purchasers, in which case the parts so subdivided may be separately valued for the purpose of arriving at the total amount of compensation;

(3) if the land has to be valued as a whole, the Court, in assessing the potentialities, may take into account the suitability of the land for subdivision, the prospective yield from a subdivision, the costs of effecting such a subdivision, and the likelihood that a purchaser acquiring the land with that object would allow some margin for unforeseen costs, contingencies and profit for himself;

(4) the land, in the circumstances of this case, must be valued as a whole; there was one potentiality realizable in the foreseeable future, namely, the development of a coastal strip, about 40 acres in area, into building lots; and upon consideration of the matters to be taken into account as stated above, the market value of the land must be increased from $488,092.50c. to $610,125.

Case referred to:—

(1) *Maori Trustee* v. *Ministry of Works* [1959] A.C. 1.

The following cases were also cited in argument:

R. V. N. Gajapatriraju v. *The Revenue Divisional Officer, Vizagapatam* [1938] A.C. 302; *Er Boon Yan & Ors.* v. *The Collector of Land Revenue, Port Dickson* [1955] M.L.J. 133; *Government* v. *The Century Spinning and Manufacturing Co., Ltd.*, A.I.R. 1942 Bom. 105; *Abu Bakar bin Haji Abdul Rahman* v. *The Collector of Land Revenue, Malacca* [1950] M.L.J. 209.

REFERENCE under section 19 of the Land Acquisition Ordinance.

N. A. Mallal for the applicants.

M. Karthigesu for the Collector of Land Revenue.

Cur. Adv. Vult.

Ambrose J.: This is a reference to this Court under section 19 of the Land Acquisition Ordinance (Cap. 248) on the application of the trustees of the estate of M. A. Namazie, deceased, who object to the amount of compensation awarded in respect of a piece of land acquired by the Government for an agricultural settlement. This land consists of Lots 77, 25 and 10-3, Mukim XII, Singapore, which are respectively comprised in Lease 4158 for 99 years from 1929, Statutory Grant 26839, and Statutory Grant 26840. The total area of the land is 406 acres 2 roods and 39 poles. The declaration under section 5 of the Ordinance that these lands were required for a public purpose, namely, agricultural settlement, was published in the Government Gazette on the 22nd March, 1957. The award of compensation made by the Collector of Land Revenue amounts to $508,092.50c.

The main question to be decided by us is the market value of the land on the 22nd April, 1955, which is the date laid down in section 2 of the Land Acquisition (Temporary Provisions) Ordinance, 1955.

The land is situated on the west side of Lim Chu Kang Road, Singapore. Its eastern boundary extends along the road between the 19th and 20th milestone for a distance of about 3,600 feet. Its western boundary extends along the foreshore of Singapore for a distance of about 4,600 feet. Lot 77 has an area of about 56 acres and consists of the Sungei Melayu valley, about 10 acres of mangrove swamp, and about 15 acres of ordinary swamp. The assessors have inspected the land and agree with the view expressed by Mr. W. E. Reeve, the Government Valuer, that it is a semi-derelict rubber estate. An area of about 37½ acres consists of immature rubber trees planted in 1941. The manager's bungalow was destroyed during the Japanese invasion in 1942. An area of about 55 acres of rubber trees was cleared during the Japanese occupation and is now covered with scrub. An area of about 90 acres of rubber trees was destroyed by fire in 1956. An area of about 93½ acres is fully planted with mature rubber trees.

Mr. C.W.A. Sennett, a licensed appraiser called by the applicants, values the land at $1,016,875, calculated at the price of $2,500 an acre, after taking into consideration the potentialities for development of the land. He values the buildings on the land at $136,208. We think that Mr. Sennett's valuation is exaggerated.

We are of the opinion that the instances of comparable sales cited to us are not of much guidance owing to differences in locality or other circumstances. One instance, which relates to land in the same locality, is the sale of Lots 138 and 139, Mukim XII, consisting of an area of 52 acres 1 rood and 27 poles in February, 1952, at $1,450 per acre. The title is a 99-year lease from 1939. This piece of land has no sea-front. The sale took place at the height of a speculative boom in land prices. If the sale had taken place on the 22nd April, 1955, the price realized would not, in our estimation, have exceeded $1,100 per acre.

The Collector of Land Revenue, basing his award on the present use of the land and its primary use in the future as a rubber estate, has valued the land and buildings at $488,092.50c., calculated at the rate of $1,200 per acre. In doing so, he acted on the opinion of the Government Valuer and appears to have made no allowance for the potentialities of the land.

Counsel for the applicants stresses three potentialities: the potentiality for subdivisional development of the coastal strip estimated to contain an area of 63½ acres; the development potentiality of an area of about 360,000 square feet adjoining Lim Chu Kang Road for the construction of shophouses; and the possibility of developing the rest of the land excluding the Sungei Melayu valley for building purposes. Mr. Sennett, the appraiser called by the applicants, supports their counsel's contentions. Mr. Reeve, the Government Valuer, expresses the view that none of the potentialities is realizable in the foreseeable future.

In our judgment, there is one potentiality realizable in the foreseeable future: that is the development of the coastal strip into building lots. This portion of the land slopes down to the foreshore for 600 feet from a height of 60 feet: the sloping land extends along the foreshore for a distance of about 4,600 feet, the average width of the beach being about 35 feet. It offers excellent views of Johore and the Straits of Johore. There is a great demand for seaside land in Singapore. The coastal strip is one of the few areas remaining to be developed for the construction of seaside bungalows.

Counsel for both sides agree that, in valuing the land, the Court has to apply the principles laid down by the Judicial Committee of the Privy Council in *Maori Trustee* v. *Ministry of Works*.[1] These principles are as follows:—

"(1) . . . . the function of the . . . . court is to ascertain as the value of the land the amount which the land if sold in the open market by a willing seller on the specified date might be expected to realize.

(2) The valuation must be of the land in the state in which it is on the specified date; any potentialities shall be taken into account in assessing its value.

(3) The court must contemplate the sale of the land as a whole unless it appears that the necessary legal consents to a subdivisional plan had been given and a survey on the ground at the specified date would have disclosed that the land or some part of it was in fact so far subdivided that the subdivided parts could at that date have been immediately sold and title given to individual purchasers, in which case the parts so subdivided may be separately valued, for the purpose of arriving at the total amount of compensation.

(4) If the land has to be valued as a whole, the court in assessing the potentialities may take into account the suitability of the land for subdivision, the prospective yield from a subdivision, the costs of effecting such a subdivision, and the likelihood that a purchaser acquiring the land with that object would allow some margin for unforeseen costs, contingencies and profit for himself."

It is not disputed that, in the circumstances of the present case, the land has to be valued as a whole.

We have applied the fourth principle set out above in assessing the potentiality of the coastal strip. We think that a portion of the beach, about 1,000 feet long, is not suitable for development. In our opinion, an area of 40 acres in the coastal strip is suitable for subdivision into 40 building lots for seaside bungalows. We have taken into account the prospective yield from such subdivision and the costs of effecting it. We have allowed a reasonable margin for unforeseen costs, contingencies and profit for which provision would be made by a prudent purchaser acquiring the land with the object of subdividing the coastal strip into building lots. Taking into consideration the potentiality of the coastal strip, we reckon that the market value of the land and buildings as on the 22nd April, 1955, must be increased from $488,092.50c. to $610,125. Our valuation is based on an estimated price of $1,500 an acre.

We now turn to consider claims for injurious affection under section 2(d) of the Land Acquisition (Temporary Provisions) Ordinance, 1955. These are claims for damage sustained by the applicants at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting their other property or their actual earnings. The applicants contend that, as all their estate buildings are situated on the portion of the Namazie Estate acquired by the Government, they have to put up new buildings on the remaining portion, comprising 366 acres, which is on the east side of Lim Chu Kang Road. It is claimed that the cost of the new buildings will be $47,298. The Collector is of the opinion that only a factory, smoke house, and store will be required to be constructed and has allowed $20,000 for this purpose. We see no reason to vary the amount allowed by him. The applicants further contend that the acquisition will increase the overhead expenses and thereby reduce the net income from the remaining area. The yearly loss of revenue is estimated at $1,750 and the applicants claim loss of revenue for 16 years amounting to $28,000. This claim has been rejected by the Collector. We see no reason for allowing it. A further claim is made under section 2(d) of the Land Acquisition (Temporary Provisions) Ordinance, 1955, for architect's fees and plan fees amounting to $1,704 in respect of a manager's bungalow to be constructed on the land acquired by the Government: site plans

and architect's plans for the construction of the bungalow have been approved by the authorities. This claim too has been rejected by the Collector. We think that the Collector was right in doing so.

The amount of compensation awarded by us on the basis of the market value on the 22nd April, 1955, under paragraph (a) of section 2 of the Land Acquisition (Temporary Provisions) Ordinance, 1955, is $610,125. No amount has been deducted under paragraph (b). The sum of $20,000 has been awarded under paragraph (d). No amount has been awarded under paragraphs (c), (e) or (f).

As the claim of the applicants exceeds the amount awarded to them by more than twenty per cent they are not entitled to their costs: this is laid down in section 34(1)(c) of the Land Acquisition Ordinance.

Order accordingly.

[It is directed by the Judge that each assessor shall receive a fee of $150 per day for five days and that the assessors' fees shall be paid by the Collector.]

Solicitors: *Mallal & Namazie; Allen & Gledhill.*

SOH CHEOW HOR v. REGINA

[C. C. A. (Rose C.J., Wee Chong Jin and Ambrose JJ.) July 6, 1960]

[Criminal Appeal No. 10 of 1960]

Criminal Law — Penal Code, s.300 — Special exceptions — Evidence Ordinance, s.106 — Burden of proof — Summing up — Non-direction.

When an accused person endeavours to bring himself within one of the special exceptions under section 300 of the Penal Code, it is sufficient for his purpose if a reasonable doubt is raised in the minds of the jury as to whether or not the necessary factors exist. If as a result of the evidence of the whole case, taken and considered together, the jury find themselves in genuine doubt as to whether or not the case falls within one of the exceptions, then their verdict on the point must be in favour of the accused.

Nowhere in the summing up was this made clear to the jury. Verdict of guilty of culpable homicide not amounting to murder was accordingly substituted for that of guilty of murder.

[Editorial Note: In this case the learned counsel for the appellant submitted that when the accused raises the issue of a general exception under Chapter IV of the Penal Code, or special exceptions under section 300 of the Penal Code, section 106 of the Evidence Ordinance applies, placing the burden on him of proving the existence of circumstances bringing the case within these exceptions. He further submitted that codifying Acts should be read in harmony with the law existing at the time of codification (*Yeo Hock Cheng* v. *Rex* [1938] M.L.J. 104), and section 106 of the Evidence Ordinance should be read as merely incorporating the English rules of burden of proof and onus which in the case of exceptions require the accused to raise no more than a reasonable doubt in the mind of the jury, except in the case of insanity where the common law calls for a balance of probability. In support of his submissions the learned counsel quoted the following cases: (1) *Damapala* (A.I.R. 1937 Rangoon 83); (2) *Lim Tong* [1938] M.L.J. 41; (3) *Chia Chan Bah* [1938] M.L.J. 147; (4) *Chan Kau* [1955] A.C. 206; [1955] 1 All E.R. 266; (5) *Parboo* A.I.R. 1941 All. 147; (6) *Gowara Pandey* A.I.R. 1949 Nagpur 160/165.]

COURT OF CRIMINAL APPEAL.

D. S. Marshall for the appellant.

A. W. Ghows (Deputy Public Prosecutor) for the respondent.

Rose C.J.: The appellant was convicted of murder.

The facts of the case, briefly, were that at about 8.00 p.m. at Stanley Street on the 20th of September 1959 the deceased, a more strongly built man than the appellant, started an argument with the appellant, which led to a fight between them.

It must be assumed from the verdict of the jury that they accepted the prosecution evidence that the appellant during the fight drew a knife and inflicted a fatal stab wound in the abdomen of the deceased.

The deceased died some thirty hours later from shock and haemorrhage as a result of what the doctors described as a penetrating incised wound on the left side of the abdomen.

The principal matter to be determined is whether on these facts the relevant exceptions to section 300 of the Penal Code i.e. sudden fight, provocation, or exceeding the right of self-defence, were adequately put to the jury by the learned trial Judge.

The matter is of particular importance in the present case as the facts which one must presume to have been found by the jury are clearly borderline as far as these issues are concerned.

With regard to the matter of sudden fight, which the learned trial Judge appeared to have considered to have been the most relevant of the exceptions, he stated at page 132 of the record:—

> "There are four elements to be considered, members of the jury. First, the fight must be sudden; secondly, there must be an absence of premeditation — it will not do if a man has time to think over what he should do and then kill the person with whom he has been fighting; thirdly, no undue advantage must be taken by the accused; fourthly, the accused must not have acted in a cruel or unusual manner. If these factors exist in this case, then you may find the accused guilty of culpable homicide not amounting to murder. But again, at the risk of repeating myself, I must warn you that you can only arrive at that verdict if you are satisfied that the accused used a knife to stab the deceased."

Whatever the position may have been in the past, it appears now to be the accepted rule that when an accused person endeavours to bring himself within one of the exceptions, it is suffi-